



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
August 24, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No. 23-10423-mkn
)	Chapter 11
CASH CLOUD, INC.,)	
dba COIN CLOUD,)	
)	Date: August 17, 2023
Debtor.)	Time: 10:30 a.m.
)	

ORDER ON OBJECTION TO DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION DATED AUGUST 1, 2023¹

On August 17, 2023, a combined hearing was conducted on final approval of the Debtor's Disclosure Statement for Chapter 11 Plan of Reorganization Dated May 8, 2023 ("Disclosure Statement") (ECF No. 529) as well as on confirmation of its proposed First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023 ("Amended Plan") (ECF No. 996). The combined hearing was held in accordance with a prior order entered by the court that conditionally approved the Disclosure Statement. (ECF No. 554). An additional order was entered setting related deadlines, including the Debtor's submission of an updated liquidation analysis. (ECF No. 918). The hearing was continued provisionally to August 29, 2023.

Prior to the combined hearing, objections to plan confirmation were filed on behalf of the following parties: Brink's Incorporated (ECF Nos. 837 and 838); Christopher McAlary ("McAlary") (ECF No. 1061); and Cole Kepro International, L.L.C. (ECF No. 1070). Prior to

¹ In this Order, all references to "ECF No." are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the Clerk of Court. All references to "Section" are to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101, et seq.

1 the hearing, a ballot tabulation was filed. (ECF No. 1077). The tabulation reflects that proposed
2 plan treatment has been accepted by Class 2(b) (Genesis Global Holdco, LLC) and by Class 3(b)
3 (general unsecured claims at 96.42% by dollar amount and 95.45% by number). The tabulation
4 also reflects that proposed plan treatment has been rejected by Class 2(c) (Enigma Securities
5 Ltd.) and Class 3(a) (AVT Nevada). No ballots were cast in Class 4 (equity interests), as such
6 interests are presumed to have rejected the proposed plan. Confirmation of the Amended Plan is
7 supported by the Official Committee of Unsecured Creditors (“Creditors Committee”) previously
8 appointed in this Chapter 11 proceeding. (ECF Nos. 131, 177, and 1066).

9 Prior to the hearing, Debtor filed and served a Notice of Filing of Proposed Order: (A)
10 Approving Debtor’s Disclosure Statement [ECF No. 529] on a Final Basis; and (B) Confirming
11 Debtor’s First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023 [ECF No.
12 996] (proposed “Plan Confirmation Order”). (ECF No. 1080). Additionally, Debtor filed and
13 served a Notice of Filing of (A) Revised Exhibit A – Creditor Trust Agreement and Declaration
14 of Trust; and (B) Redline of Exhibit A - Creditor Trust Agreement and Declaration of Trust
15 Attached to Supplement to Debtor’s Chapter 11 Plan of Reorganization Dated May 8, 2023 [ECF
16 No. 528] (“Creditor Trust Agreement”). (ECF No. 1081).

17 At the combined hearing, counsel on behalf of Brink’s Incorporated, Cole Kepro
18 International, L.L.C., Enigma Securities Ltd., and AVT Nevada consented to the language in the
19 proposed Plan Confirmation Order addressing their confirmation objections and proposed plan
20 treatment. No party objected to the language or terms of the Creditor Trust Agreement.
21 Additionally, Enigma Securities Ltd. as well as AVT Nevada did not object to language in the
22 Plan Confirmation Order permitting cramdown treatment of their dissenting Classes 2(C) and
23 3(a). In light of such consent, the court entertained oral argument on the remaining confirmation
24 objection raised by McAlary.

25 McAlary is the only party that continues to object to plan confirmation, even though he is
26 the one who signed the Debtor’s initial Chapter 11 Plan dated May 8, 2023 (ECF No. 528) and
27 also signed the Disclosure Statement on behalf of the Debtor. Regardless of the atypical identity
28

1 of the objecting party, however, the court has an independent duty to determine whether the
2 Chapter 11 plan proponent has satisfied the requirements for confirmation under Section 1129.

3 McAlary's primary objection, in various forms, concerns whether the proposed Amended
4 Plan is feasible under Section 1129(a)(11). McAlary maintains that the Amended Plan does not
5 include an adequate means of implementation as required by Section 1123(a)(5) because its
6 effective date does not occur until after payment of substantial administrative claims anticipated
7 in this case. He argues that unless claims entitled to priority are paid on the effective date as
8 required by Section 1129(a)(9), including Chapter 11 professional fees and other administrative
9 claims under Section 507(a)(2), the Amended Plan simply cannot be implemented. Because the
10 payment of all administrative claims depends on the uncertain results of further efforts to
11 liquidate and/or collect sums claimed by the Debtor, McAlary concludes that there is insufficient
12 evidence to determine when the proposed Plan will be effective and therefore no basis to find
13 that the so-called "feasibility" requirement under Section 1129(a)(11) has been met.

14 Section 1129(a)(11) only requires, however, a finding that confirmation is "not likely to
15 be followed by the liquidation...of the debtor...unless such liquidation...is proposed in the
16 plan." In this instance, the initial Chapter 11 Plan dated May 8, 2023 "toggled" between two
17 alternatives: one if the Debtor obtained a sale of substantially all of its assets, and the other if a
18 sale did not occur. If the former, the Debtor's operations would cease and any remaining assets
19 would be administered through a separate creditor trust; if the latter, a reorganized debtor would
20 emerge to continue operations.

21 After an auction sale of substantially all of the Debtor's assets was approved (ECF No.
22 795), Debtor filed the Amended Plan dated August 1, 2023 that implements the first toggle
23 alternative, i.e., to cease operations and to liquidate its remaining assets through a creditor trust.
24 The consequence of this alternative is dictated by the elements present under Section 1141(d)(3):
25 the Debtor will not receive a bankruptcy discharge because it is liquidating all of its assets, it will
26 no longer engage in business, and it is not an individual eligible for a discharge under Section
27 727(a). Under these circumstances, the court concludes that the actual language used in Section
28 1129(a)(11) has been satisfied, to wit: confirmation of the Amended Plan is not "likely to be

1 followed by the liquidation” of the Debtor because the purpose of the proposed plan itself is the
2 liquidation of the Debtor.

3 The decision to liquidate a non-individual debtor in Chapter 11 rather than to convert to
4 Chapter 7 or to simply dismiss the bankruptcy proceeding carries an additional implication.
5 Under any one of the three alternatives – Chapter 11 liquidation, Chapter 7 conversion, or
6 dismissal of the bankruptcy proceeding - the non-individual entity does not obtain a discharge of
7 its personal liability for existing debts. Under any of the alternatives, unsecured creditors hope
8 to be paid, if at all, from the unencumbered assets of the debtor. Bankruptcy, however, offers
9 certain unique tools available to investigate the activities of a debtor (including by its insiders)
10 and to recover assets transferred by a debtor. Because the administrative expenses of
11 bankruptcy, whether in Chapter 11 or in Chapter 7, are paid if at all ahead of non-priority,
12 unsecured claims, there is limited benefit in incurring additional priority administrative expenses
13 by conversion to Chapter 7 if the same approach to recovering estate assets must be pursued.
14 Thus, a Chapter 11 debtor’s business judgment to liquidate in Chapter 11, rather than converting
15 to Chapter 7, should be given considerable weight, especially if it is supported by an official
16 committee of unsecured creditors. In this instance, the official Creditors Committee as well as
17 over 95% of the nonpriority unsecured creditors casting ballots support confirmation of the
18 Amended Plan.

19 Even if this conclusion is not dictated by the actual words used in Section 1129(a)(11),
20 the traditional notions of Chapter 11 “feasibility” also have been satisfied. Once a permissible
21 decision has been made to liquidate in Chapter 11 rather than to reorganize, far less is required to
22 implement that decision. A reorganized debtor entity will not emerge, a restructuring of existing
23 operations will not occur, a financing of ongoing activities will not be necessary, and a
24 replacement of management is not required. Absent a restructuring or management succession,
25 the disclosure requirements of post-confirmation management under Section 1129(a)(5) simply
26 does not apply.

27 What does apply, however, is the consideration of how the administrative expenses
28 incurred in the Chapter 11 proceeding will be paid. Indeed, the payment of allowed

1 administrative and other priority claims in bankruptcy is appropriately considered in every case.
2 Absent such priority status, there is little incentive or inducement for third parties to provide
3 postpetition goods or services to any bankruptcy estate. Section 1129(a)(9) reflects the
4 contractual nature of Chapter 11 proceedings where priority claimants can insist on payment in
5 full on the effective date of a plan, “except to the extent that the holder of a particular claim has
6 agreed to a different treatment of such claim.” In other words, administrative creditors in certain
7 Chapter 11 cases may conclude that their best hope of being paid all or a greater portion of their
8 priority claims lies in confirming the proposed plan rather than preventing confirmation.
9 Although multiple parties in this case have simply filed “administrative claims” or sought
10 allowance of administrative claims, none have objected to confirmation of the Amended Plan.
11 Similarly, the vast majority of nonpriority unsecured creditors support confirming a plan whose
12 effective date occurs after allowed priority claims are paid in full. Under these circumstances,
13 the court concludes that the requirements of Section 1129(a)(9) have been satisfied.

14 The degree of certainty required for a Chapter 11 plan to be feasible varies from case to
15 case and plan to plan. In this instance, is there a certainty that the proposed creditor trust will
16 succeed in collecting all of the assets it pursues? No. Is there certainty that a Chapter 7 trustee
17 would succeed in collecting all of the assets that she or he pursues? No. Is certainty required?
18 No. Is there a sufficient showing of certainty that the claims of the estate will be pursued? Yes.
19 In conjunction with plan confirmation, Debtor seeks approval of a stipulation for the Creditors
20 Committee to obtain derivative standing to pursue claims of the estate, including a possible claim
21 against McAlary, as well as avoidance and collection claims typically held by the Chapter 11
22 estate. That requested approval of the proposed stipulation is the subject of a separate order. In
23 this instance, an overwhelming majority of the general unsecured creditor class accept an
24 uncertain chance of receiving some return on their claims rather than a certainty of receiving no
25 return at all on their claims.

26 Finally, the court considers McAlary’s objection to the Declaration of Tanner James, to
27 which is attached the Debtor’s amended liquidation analysis. The declarant is the Debtor’s
28 financial adviser who previously was authorized to file the updated liquidation analysis.

McAlary argues that Paragraphs 5, 7, 8, 10, 11, 12, 13, 15, 16, and 17 of the declaration contain inadmissible hearsay. No objection is raised, however, to the liquidation analysis attached as Exhibit 1 to the declaration, nor to the financial adviser's testimony in Paragraph 4 that the Amended Plan does not worsen the outcome for creditors. Moreover, McAlary does not object to the testimony in Paragraph 6 that the value of recoverable assets will materially degrade without the services of current Chapter 11 professionals. McAlary also does not object to the financial adviser's testimony in Paragraph 9 that the assets generated by the proposed creditor trust may be sufficient to pay all allowed administrative and priority claims in full, and possibly provide a small return to general unsecured claims. Regardless of the merit, if any, of McAlary's hearsay objections, the remaining uncontradicted testimony is significant. At the confirmation hearing, no request was made to cross-examine the declarant or to have him testify as a live witness. Moreover, no testimony was offered or provided from McAlary, or any competent witness, to dispute the liquidation analysis offered by the Debtor. On this record, the preponderance of the evidence presented supports a finding and a conclusion that the Amended Plan satisfies the requirements of Section 1129(a)(11), as well as the remaining applicable requirements of Section 1129(a) and 1129(b).

IT IS THEREFORE ORDERED that the Objection to Debtor's First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023, brought by Christopher McAlary, Docket No. 1061, be, and the same hereby is, **OVERRULED**.

IT IS FURTHER ORDERED that Exhibit "1" to the Notice of Filing of Proposed Order: (A) Approving Debtor's Disclosure Statement [ECF No. 529] on a Final Basis; and (B) Confirming Debtor's First Amended Chapter 11 Plan of Reorganization Dated August 1, 2023, filed on August 16, 2023, as Docket No. 1080, is **APPROVED**. Counsel for the Debtors shall upload in final form the proposed order appearing as Exhibit "1" to the aforementioned Notice.

IT IS FURTHER ORDERED that the continued hearing in this matter scheduled provisionally for August 29, 2023, is **VACATED**.

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